



**STATE OF TENNESSEE  
DEPARTMENT OF FINANCE AND ADMINISTRATION**

**REQUEST FOR PROPOSALS  
FOR  
POWERBUILDER DEVELOPMENT AND  
SUPPORT SERVICES**

**RFP NUMBER: 317.03-111**

**December 1, 2003**

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# 1 INTRODUCTION

## 1.1 Statement of Purpose

- 1.1.1 The State of Tennessee, Department of Finance and Administration, hereinafter referred to as the State, has issued this Request for Proposals (RFP) to define the State's minimum service requirements; solicit proposals; detail proposal requirements; and, outline the State's process for evaluating proposals and selecting the contractor.

Through this RFP, the State seeks to buy the best services at the most favorable, competitive prices and to give ALL qualified businesses, including those that are owned by minorities, women, persons with a disability, and small business enterprises, opportunity to do business with the state as contractors and sub-contractors.

- 1.1.2 The State intends to secure contracts for PowerBuilder Development and Support services, hereinafter referred to as "PBS" services. PBS services are defined as the development, implementation, and support of computer application programs and systems using the PowerBuilder development language and technology. Through this procurement, the State is seeking personnel in three Job Classifications: PowerBuilder Developer 1, PowerBuilder Developer 2, and EAS Server Administrator. See the *pro forma* contract (RFP Attachment 6.1) Section A.2 for description of the Job Classifications and required experience levels and skill sets.
- 1.1.3 The personnel supplied by the vendor will provide PBS services within the context of the technical environment described by the *State Technical Architecture*. The vendor may request a copy of the *State Technical Architecture* by submitting a written request to the RFP coordinator listed in RFP Section 1.5.1. When a contract is executed pursuant to this RFP, the State Technical Architecture will be included as Contract Attachment A.
- 1.1.4 The State will award PBS services contracts to the three (3) best-evaluated vendors; this will be a shared award with ongoing competition. After the award is made and contracts are executed, the State will issue a Statement of Work (SOW) whenever it has a need for PBS services. The three contractors will compete on each PowerBuilder SOW by responding with qualified candidates in accordance with the State's requirements. Proposed candidates must possess the amount of experience requested in the SOW. The State will select the lowest-cost candidate who meets the SOW requirements.
- 1.1.5 Contractors are expected to respond to every SOW released. Failure to respond adequately may result in the termination of the Contractor's contract. See the attached *pro forma* contract for the State's performance requirements (Contract Section A.14).
- 1.1.6 In response to this RFP, Proposers will only propose hourly rates for years 1 and 2, and will be evaluated on these rates. If the contract is extended, as described in *pro forma* Contract Section B.2, the maximum allowable Service Rates for year 3 will be determined using the Consumer Price Index (CPI) as described in the *pro forma* contract, Section C.4.
- 1.1.7 The purpose of this RFP is to establish potential sources of supply for PBS services. However, the State makes no guarantees, either stated or implied, about the demand for PBS services.
- 1.1.8 Depending on the nature of the application development and support services provided pursuant to the contract resulting from this procurement, the State may require the Contractor to sign one or more *HIPAA Business Associate Agreements*. A copy of the agreement appears in RFP Attachment 6.10.

## 1.2 Scope of Service, Contract Period, and Required Terms and Conditions

The RFP Attachment 6.1, *Pro Forma* Contract details the State's required:

- Scope of Services and Deliverables in Section A;
- Contract Period in Section B;

- Payment Terms in Section C;
- Standard Terms and Conditions in Section D; and,
- Special Terms and Conditions in Section E.

The *pro forma* contract substantially represents the contract document that the Proposer selected by the State MUST agree to and sign.

### 1.3 Nondiscrimination

No person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the State's contracted programs or activities on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor shall they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the State or in the employment practices of the State's contractors. Accordingly, all vendors entering into contracts with the State shall, upon request, be required to show proof of such nondiscrimination and to post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

The State has designated the following to coordinate compliance with the nondiscrimination requirements of the State of Tennessee, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and applicable federal regulations.

Buddy Lea, Director of Resource Development and Support  
12<sup>th</sup> Floor, Wm. R. Snodgrass Building  
312 8<sup>th</sup> Avenue North, Nashville, Tennessee 37243  
(615) 741-7662

### 1.4 Assistance to Proposers With a Disability

A Proposer with a disability may receive accommodation regarding the means of communicating this RFP and participating in this RFP process. A Proposer with a disability should contact the RFP Coordinator to request reasonable accommodation no later than the Disability Accommodation Request Deadline detailed in the RFP Section 2, Schedule of Events.

### 1.5 RFP Communications

- 1.5.1 All communications regarding this RFP should be in writing and must be directed to the following RFP Coordinator, the State of Tennessee's only point of contact for this RFP.

Travis Johnson  
Department of Finance and Administration  
18<sup>th</sup> Floor, Wm. R. Snodgrass Tennessee Tower  
312 8<sup>th</sup> Avenue North  
Nashville, Tennessee 37243-1510  
(615) 741-5727  
(615) 741-4589 Fax  
Travis.Johnson@state.tn.us

**NOTICE: Unauthorized contact regarding this RFP with other employees or officials of the State of Tennessee may result in disqualification from this procurement.**

- 1.5.2 The State has assigned the following RFP identification number that must be referenced in all communications regarding the RFP:

RFP-317.03-111

- 1.5.3 Any oral communications shall be considered unofficial and non-binding with regard to this RFP.

- 1.5.4 Each Proposer shall assume the risk of the method of dispatching any communication or proposal to the State. The State assumes no responsibility for delays or delivery failures resulting from the method of dispatch. Actual or electronic “postmarking” of a communication or proposal to the State by a deadline date shall not substitute for actual receipt of a communication or proposal by the State.
- 1.5.5 The RFP Coordinator must receive all written comments, including questions and requests for clarification, no later than the Written Comments Deadline detailed in the RFP Section 2, Schedule of Events.
- 1.5.6 The State reserves the right to determine, at its sole discretion, the appropriate and adequate responses to written comments, questions, and requests for clarification. The State’s official responses and other official communications pursuant to this RFP shall constitute an amendment of this RFP.
- 1.5.7 The State will convey all official responses and communications pursuant to this RFP to the potential proposers from whom the State has received a Notice of Intent to Propose.
- 1.5.8 Only the State’s official, written responses and communications shall be considered binding with regard to this RFP.
- 1.5.9 The State reserves the right to determine, at its sole discretion, the method of conveying official responses and communications pursuant to this RFP (e.g., written, facsimile, electronic mail, or Internet posting).

Most important documents will be posted on the following website:

<http://state.tn.us/finance/oir/pcm/rfps.html>

- 1.5.10 Any data or factual information provided by the State, in this RFP or an official response or communication, shall be deemed for informational purposes only, and if a Proposer relies on such data or factual information, the Proposer should either: (1) independently verify the information; or, (2) obtain the State’s written consent to rely thereon.

## 1.6 Notice of Intent to Propose

Each potential proposer should submit a Notice of Intent to Propose to the RFP Coordinator by the deadline detailed in the RFP Section 2, Schedule of Events. The notice should include:

- Proposer’s name
- name and title of a contact person
- address, telephone number, facsimile number, and email address of the contact person

**NOTICE: A Notice of Intent to Propose creates no obligation and is not a prerequisite for making a proposal, however, it is necessary to ensure receipt of RFP amendments and other communications regarding the RFP (refer to RFP Sections 1.5, et seq., above).**

## 1.7 Proposal Deadline

Proposals must be submitted no later than the Proposal Deadline time and date detailed in the RFP Section 2, Schedule of Events. A proposal must respond to the written RFP and any RFP exhibits, attachments, or amendments. A late proposal shall not be accepted, and a Proposer’s failure to submit a proposal before the deadline shall cause the proposal to be disqualified.

## 2 RFP SCHEDULE OF EVENTS

The following Schedule of Events represents the State's best estimate of the schedule that will be followed. Unless otherwise specified, the time of day for the following events will be between 8:00 a.m. and 4:30 p.m., Central Time.

RFP SCHEDULE OF EVENTS		
<b>NOTICE: The State reserves the right, at its sole discretion, to adjust this schedule as it deems necessary. The State will communicate any adjustment to the Schedule of Events to the potential proposers from whom the State has received a Notice of Intent to Propose.</b>		
EVENT	TIME	DATE (all dates are state business days)
1. State Issues RFP		12/1/03
2. Disability Accommodation Request Deadline		12/8/03
3. Notice of Intent to Propose Deadline		12/10/03
4. Written Comments Deadline		12/15/03
5. State Responds to Written Comments		12/22/03
6. Proposal Deadline	2:00 p.m.	1/5/04
7. State Completes Technical Proposal Evaluations		1/12/04
8. State Opens Cost Proposals and Calculates Scores	9:00 a.m.	1/13/04
9. State Issues Evaluation Notice <u>and</u> Opens RFP Files for Public Inspection	9:00 a.m.	1/15/04
10. Contract Signing		1/28/04
11. Contract Signature Deadline		2/4/04
12. Contract Start Date		2/5/04

### 3 PROPOSAL REQUIREMENTS

Each Proposer must submit a proposal in response to this RFP with the most favorable terms that the Proposer can offer. There will be no best and final offer procedure.

#### 3.1 Proposal Form and Delivery

3.1.1 Each response to this RFP must consist of a Technical Proposal and a Cost Proposal (as described below).

3.1.2 Each Proposer must submit one (1) original and six (6) copies of the Technical Proposal to the State in a sealed package that is clearly marked:

**“Technical Proposal in Response to RFP- 317.03-111 -- Do Not Open”**

3.1.3 Each Proposer must submit one (1) Cost Proposal to the State in a separate, sealed package that is clearly marked:

**“Cost Proposal in Response to RFP- 317.03-111 -- Do Not Open”**

3.1.4 If a Proposer encloses the separately sealed proposals (as detailed above) in a larger package for mailing, the Proposer must clearly mark the outermost package:

**“Contains Separately Sealed Technical and Cost Proposals for RFP- 317.03-111”**

3.1.5 The State must receive all proposals in response to this RFP, at the following address, no later than the Proposal Deadline time and date detailed in the RFP Section 2, Schedule of Events.

Attn: Travis Johnson  
Department of Finance and Administration  
18<sup>th</sup> Floor, Wm. R. Snodgrass Tennessee Tower  
312 8<sup>th</sup> Avenue North  
Nashville, Tennessee 37243-1510

3.1.6 A Proposer may not deliver a proposal orally or by any means of electronic transmission.

#### 3.2 Technical Proposal

3.2.1 The RFP Attachment 6.3, Technical Proposal and Evaluation Guide details specific requirements for making a Technical Proposal in response to this RFP. This guide includes mandatory and general requirements as well as technical queries, all of which require a written response.

**NOTICE: No pricing information shall be included in the Technical Proposal. Inclusion of Cost Proposal amounts in the Technical Proposal shall make the proposal non-responsive and the State shall reject it.**

3.2.2 Each Proposer must use the Technical Proposal and Evaluation Guide to organize, reference, and draft the Technical Proposal. Each Proposer should duplicate the Technical Proposal and Evaluation Guide and use it as a table of contents covering the Technical Proposal (adding proposal page numbers as appropriate).

3.2.3 Each proposal should be economically prepared, with emphasis on completeness and clarity of content. A proposal, as well as any reference material presented, must be written in English and must be written on standard 8 1/2" x 11" paper (although foldouts containing charts, spreadsheets, and oversize exhibits are permissible). All proposal pages must be numbered.

3.2.4 All information included in a Technical Proposal should be relevant to a specific requirement detailed in the Technical Proposal and Evaluation Guide. All information must be incorporated into a response

to a specific requirement and clearly referenced. Any information not meeting these criteria will be deemed extraneous and will in no way contribute to the evaluation process.

3.2.5 The State may determine a proposal to be non-responsive and reject it if the Proposer fails to organize and properly reference the Technical Proposal as required by this RFP and the Technical Proposal and Evaluation Guide;

3.2.6 The State may determine a proposal to be non-responsive and reject it if the Technical Proposal document fails to appropriately address/meet all of the requirements detailed in the Technical Proposal and Evaluation Guide

### **3.3 Cost Proposal**

3.3.1 The Cost Proposal must be submitted to the State in a sealed package separate from the Technical proposal.

3.3.2 Each Cost Proposal must be recorded on an exact duplicate of the RFP Attachment 6.4, Cost Proposal and Scoring Guide.

3.3.3 Each Proposer shall ONLY record the proposed cost exactly as required by the Cost Proposal and Scoring Guide and shall NOT record any other rates, amounts, or information.

3.3.4 The proposed cost shall incorporate all costs for services under the contract for the total contract period.

3.3.5 The Proposer must sign and date the Cost Proposal.

3.3.6 If a Proposer fails to submit a Cost Proposal as required, the State shall determine the proposal to be non-responsive and reject it.



## **4 GENERAL REQUIREMENTS & CONTRACTING INFORMATION**

### **4.1 Proposer Required Review and Waiver of Objections**

Each Proposer must carefully review this RFP and all attachments, including but not limited to the *pro forma* contract, for comments, questions, defects, objections, or any other matter requiring clarification or correction (collectively called “comments”). Comments concerning RFP objections must be made in writing and received by the State no later than the Written Comments Deadline detailed in the RFP Section 2, Schedule of Events. This will allow issuance of any necessary amendments and help prevent the opening of defective proposals upon which contract award could not be made.

Protests based on any objection shall be considered waived and invalid if these comments/objections have not been brought to the attention of the State, in writing, by the Written Comments Deadline.

### **4.2 RFP Amendment and Cancellation**

The State reserves the unilateral right to amend this RFP in writing at any time. If an RFP amendment is issued, the State will convey such amendment to the potential proposers who submitted a Notice of Intent to Propose. Each proposal must respond to the final written RFP and any exhibits, attachments, and amendments.

The State of Tennessee reserves the right, at its sole discretion, to cancel and reissue this RFP or to cancel this RFP in its entirety in accordance with applicable laws and regulations.

### **4.3 Proposal Prohibitions and Right of Rejection**

4.3.1 The State of Tennessee reserves the right, at its sole discretion, to reject any and all proposals in accordance with applicable laws and regulations.

4.3.2 Each proposal must comply with all of the terms of this RFP and all applicable State laws and regulations. The State may reject any proposal that does not comply with all of the terms, conditions, and performance requirements of this RFP. The State may consider any proposal that does not meet the requirements of this RFP to be non-responsive, and the State may reject such a proposal.

4.3.3 A proposal of alternate services (*i.e.*, a proposal that offers services different from those requested by this RFP) shall be considered non-responsive and rejected.

4.3.4 A Proposer may not restrict the rights of the State or otherwise qualify a proposal. The State may determine such a proposal to be a non-responsive counteroffer, and the proposal may be rejected.

4.3.5 A Proposer may not submit the Proposer's own contract terms and conditions in a response to this RFP. If a proposal contains such terms and conditions, the State may determine, at its sole discretion, the proposal to be a non-responsive counteroffer, and the proposal may be rejected.

4.3.6 A Proposer shall not submit more than one proposal. Submitting more than one proposal shall result in the disqualification of the Proposer.

4.3.7 A Proposer shall not submit multiple proposals in different forms. This prohibited action shall be defined as a Proposer submitting one proposal as a prime contractor and permitting a second Proposer to submit another proposal with the first Proposer offered as a subcontractor. This restriction does not prohibit different Proposers from offering the same subcontractor as a part of their proposals, provided that the subcontractor does not also submit a proposal as a prime contractor. Submitting multiple proposals in different forms may result in the disqualification of all Proposers knowingly involved.

4.3.8 The State shall reject a proposal if the Cost Proposal was not arrived at independently without collusion, consultation, communication, or agreement as to any matter relating to such prices with any

other Proposer. Regardless of the time of detection, the State shall consider any of the foregoing prohibited actions to be grounds for proposal rejection or contract termination.

- 4.3.9 The State shall not contract with or consider a proposal from:
- 4.3.9.1 an individual who is, or within the past six months has been, an employee or official of the State of Tennessee;
  - 4.3.9.2 a company, corporation, or any other contracting entity in which an ownership of two percent (2%) or more is held by an individual who is, or within the past six months has been, an employee or official of the State of Tennessee (this shall not apply either to financial interests that have been placed into a "blind trust" arrangement pursuant to which the employee does not have knowledge of the retention or disposition of such interests or to the ownership of publicly traded stocks or bonds where such ownership constitutes less than 2% of the total outstanding amount of the stocks or bonds of the issuing entity);
  - 4.3.9.3 a company, corporation, or any other contracting entity which employs an individual who is, or within the past six months has been, an employee or official of the State of Tennessee in a position that would allow the direct or indirect use or disclosure of information, which was obtained through or in connection with his or her employment and not made available to the general public, for the purpose of furthering the private interest or personal profit of any person; or,
  - 4.3.9.4 any individual, company, or other entity involved in assisting the State in the development, formulation, or drafting of this RFP or its scope of services shall be considered to have been given information that would afford an unfair advantage over other Proposers, and such individual, company, or other entity may not submit a proposal in response to this RFP.
  - 4.3.9.5 For the purposes of applying the requirements of RFP subsection 4.3.9, *et. seq.*, an individual shall be deemed an employee or official of the State of Tennessee until such time as all compensation for salary, termination pay, and annual leave has been paid.
  - 4.3.10 The State reserves the right, at its sole discretion, to waive a proposal's variances from full compliance with this RFP. If the State waives minor variances in a proposal, such waiver shall not modify the RFP requirements or excuse the Proposer from full compliance with such. Notwithstanding any minor variance, the State may hold any Proposer to strict compliance with this RFP.

#### **4.4 Incorrect Proposal Information**

If the State determines that a Proposer has provided, for consideration in this RFP process or subsequent contract negotiations, incorrect information that the Proposer knew or should have known was materially incorrect, that proposal shall be determined non-responsive and shall be rejected.

#### **4.5 Proposal of Additional Services**

If a proposal offers services in addition to those required by and described in this RFP, the additional services may be added to the contract before contract signing at the sole discretion of the State. Notwithstanding the foregoing, a Proposer shall not propose any additional cost amount(s) or rate(s) for additional services.

**NOTICE: The Proposer's Cost Proposal shall record only the proposed cost as required in this RFP and shall not record any other rates, amounts, or information. If a Proposer fails to submit a Cost Proposal as required, the State shall determine the proposal to be non-responsive and shall reject the proposal.**

#### **4.6 Assignment and Subcontracting**

- 4.6.1 The Proposer awarded a contract pursuant to this RFP may not subcontract, transfer, or assign any portion of the contract without the State's prior, written approval.

- 4.6.2 A subcontractor may only be substituted for a proposed subcontractor at the discretion of the State and with the State's prior, written approval.
- 4.6.3 At its sole discretion, the State reserves the right to refuse approval of any subcontract, transfer, or assignment.
- 4.6.4 Notwithstanding State approval of each subcontractor, the Proposer, if awarded a contract pursuant to this RFP, shall be the prime contractor and shall be responsible for all work performed.

#### **4.7 Right to Refuse Personnel**

At its sole discretion, the State reserves the right to refuse any personnel, of the prime contractor or a subcontractor, for use in the performance of a contract pursuant to this RFP.

#### **4.8 Insurance**

The State may require the apparent successful Proposer to provide proof of adequate worker's compensation and public liability insurance coverage before entering into a contract. Additionally, the State may require, at its sole discretion, the apparent successful Proposer to provide proof of adequate professional malpractice liability or other forms of insurance. Failure to provide evidence of such insurance coverage is a material breach and grounds for termination of the contract negotiations. Any insurance required by the State shall be in form and substance acceptable to the State.

#### **4.9 Licensure**

Before a contract pursuant to this RFP is signed, the apparent successful Proposer must hold all necessary, applicable business and professional licenses. The State may require any or all Proposers to submit evidence of proper licensure.

#### **4.10 Service Location and Work Space**

The service pursuant to this RFP is to be performed, completed, managed, and delivered as detailed in the RFP Attachment 6.1, *Pro Forma* Contract.

Most work pursuant to this RFP will be performed on-site in Nashville, Tennessee. If required, the State will provide contractor personnel with office space, access to telephones, office supplies, workstations or terminals, and connections to the relevant State LAN/WAN and/or mainframe environment.

Normal State working hours are 8:00 a.m. to 4:30 p.m., Monday through Friday, with additional hours worked as necessary to meet project deadlines. The State project coordinator will determine the structure of the project, including tasks, milestones, deliverables, and completion dates. The Contractor will establish the number of hours Contractor personnel must work to meet the State's needs, up to, but not to exceed thirty-seven and one-half (37.5) hours per week. The State must provide prior written approval for Contractor personnel to work more than 37.5 hours per week. The State reserves the right to modify the work hours in the best interest of the project.

The State reserves the right to request on-site or off-site work, if either is deemed to be in the best interest of the project. However, Contractor personnel will not be able to work on-site on State holidays.

All State facilities are non-smoking buildings. Each building has one area designated for smoking and this is generally a loading dock, parking garage, basement, etc. Contractor personnel will be paid for time at their place of work and will not be compensated for smoke breaks, regardless of duration. Contractor personnel will make arrangements for accounting for this time with their respective State project coordinator.

#### **4.11 Proposal Withdrawal**

A Proposer may withdraw a submitted proposal at any time up to the Proposal Deadline time and date detailed in the RFP Section 2, Schedule of Events. To do so, a proposer must submit a written request, signed by a Proposer's authorized representative to withdraw a proposal. After withdrawing a previously submitted proposal, a Proposer may submit another proposal at any time up to the Proposal Deadline.

#### **4.12 Proposal Errors and Amendments**

Each Proposer is liable for all proposal errors or omissions. A Proposer will not be allowed to alter or amend proposal documents after the Proposal Deadline time and date detailed in the RFP Section 2, Schedule of Events unless such is formally requested, in writing, by the State.

#### **4.13 Proposal Preparation Costs**

The State will not pay any costs associated with the preparation, submittal, or presentation of any proposal.

#### **4.14 Disclosure of Proposal Contents**

Each proposal and all materials submitted to the State in response to this RFP shall become the property of the State of Tennessee. Selection or rejection of a proposal does not affect this right. All proposal information, including detailed price and cost information, shall be held in confidence during the evaluation process. Notwithstanding, a list of actual proposers submitting timely proposals may be available to the public, upon request, directly after technical proposals are opened by the state.

Upon the completion of the evaluation of proposals, indicated by public release of an Evaluation Notice, the proposals and associated materials shall be open for review by the public in accordance with *Tennessee Code Annotated*, Section 10-7-504(a)(7). By submitting a proposal, the Proposer acknowledges and accepts that the full proposal contents and associated documents shall become open to public inspection.

#### **4.15 Contractor Registration**

All service contractors with state of Tennessee contracts must be registered through the Department of Finance and Administration's Service Provider Registry prior to contract approval. However, registration with the state is not required to make a proposal (any unregistered service provider must simply register as required prior to the final contract approval). Refer to the following Internet URL for more information about the Service Provider Registry and to register "on-line."

[www.state.tn.us/finance/rds/ocr/sprs.html](http://www.state.tn.us/finance/rds/ocr/sprs.html)

#### **4.16 Contract Approval**

The RFP and the contractor selection processes do not obligate the State and do not create rights, interests, or claims of entitlement in either the Proposers with the apparent best-evaluated proposals or any other Proposer. Contract award and State obligations pursuant thereto shall commence only after the contract is signed by the Contractor and the head of the procuring state agency and after the contract is approved and signed by all other State officials as required by State laws and regulations.

#### **4.17 Contract Payments**

All contract payments shall be made in accordance with the contract's Payment Terms and Conditions provisions (refer to RFP Attachment 6.1, *Pro Forma* Contract, Section C). No payment shall be made until the contract is approved as required by State laws and regulations. Under no conditions shall the State be liable for payment of any type associated with the contract or responsible for any work done by the Contractor, even work done in good faith and even if the Contractor is orally directed to proceed with the delivery of services, if it occurs before contract approval by State officials as required

by applicable statutes and rules of the State of Tennessee or before the contract start date or after the contract end date specified by the contract.

#### **4.18 Contractor Performance**

The Contractor shall be responsible for the completion of all work set out in the contract. All work is subject to inspection, evaluation, and acceptance by the State. The State may employ all reasonable means to ensure that the work is progressing and being performed in compliance with the contract. At reasonable times, the State may inspect those areas of the Contractor's place of business that are related to the performance of the contract. If the State requires such an inspection, the Contractor shall provide reasonable access and assistance.

#### **4.19 Contract Amendment**

During the course of this contract, the State may request the Contractor to perform additional work for which the Contractor would be compensated. That work shall be within the general scope of this RFP. In such instances, the State shall provide the Contractor a written description of the additional work, and the Contractor shall submit a time schedule for accomplishing the additional work and a price for the additional work based on the rates included in the Contractor's proposal to this RFP. If the State and the Contractor reach an agreement regarding the work and associated compensation, such agreement shall be effected by means of a contract amendment. Any such amendment requiring additional work must be mutually agreed upon by the parties and signed by the Contractor and the head of the procuring state agency and must be approved by other State officials as required by State laws and regulations. The Contractor shall not commence additional work until the State has issued a written contract amendment and secured all required approvals.

#### **4.20 Severability**

If any provision of this RFP is declared by a court to be illegal or in conflict with any law, said decision shall not affect the validity of the remaining RFP terms and provisions, and the rights and obligations of the State and Proposers shall be construed and enforced as if the RFP did not contain the particular provision held to be invalid.

## 5 PROPOSAL EVALUATION & CONTRACT AWARD

### 5.1 Evaluation Categories and Maximum Points

The State will consider qualifications and experience, technical approach, and cost in the evaluation of proposals. The maximum points that shall be awarded for each of these categories are detailed below.

CATEGORY	MAXIMUM POINTS POSSIBLE
Qualifications and Experience	35
Technical Approach	25
Cost Proposal	40

### 5.2 Evaluation Process

The proposal evaluation process is designed to award the contract not necessarily to the Proposers of least cost, but rather to the Proposers with the best combination of attributes based upon the evaluation criteria.

- 5.2.1 The RFP Coordinator will use the RFP Attachment 6.3, Technical Proposal and Evaluation Guide to manage the Technical Proposal Evaluation and maintain evaluation records.
  - 5.2.1.1 The RFP Coordinator will review each Technical Proposal to determine compliance with mandatory requirements (refer to RFP Attachment 6.3, Technical Proposal and Evaluation Guide, Technical Proposal Section A). If the RFP Coordinator determines that a proposal may have failed to meet one or more of the mandatory requirements, the Proposal Evaluation Team will review the proposal and document its determination of whether: (1) the proposal meets requirements for further evaluation; (2) the State will request clarifications or corrections; or, (3) the State will determine the proposal non-responsive to the RFP and reject it.
  - 5.2.1.2 A Proposal Evaluation Team, made up of three or more State employees, will evaluate each Technical Proposal that appears responsive to the RFP.
  - 5.2.1.3 Each Proposal Evaluation Team member will independently evaluate each proposal against the evaluation criteria in this RFP, rather than against other proposals, and will score each in accordance with the RFP Attachment 6.3, Technical Proposal and Evaluation Guide.
  - 5.2.1.4 The State reserves the right, at its sole discretion, to request Proposer clarification of a Technical Proposal or to conduct clarification discussions with any or all Proposers. Any such clarification or discussion shall be limited to specific sections of the proposal identified by the State. The subject Proposer shall put any resulting clarification in writing as may be required by the State.
- 5.2.2 After Technical Proposal evaluations are completed, the RFP Coordinator will open the Cost Proposals and use the RFP Attachment 6.4, Cost Proposal and Scoring Guide to calculate and document the Cost Proposal scores.
- 5.2.3 For each responsive proposal, the RFP Coordinator will add the average Technical Proposal score to the Cost Proposal score (refer to RFP Attachment 6.5, Proposal Score Summary Matrix).

### 5.3 Contract Award Process

- 5.3.1 The RFP Coordinator will forward the results of the proposal evaluation process to the head of the procuring agency who will consider the proposal evaluation process results and all pertinent

information available to make a determination about the contract award. The State reserves the right to make an award without further discussion of any proposal.

Notwithstanding the foregoing, to effect a contract award to a proposer other than the one receiving the highest evaluation score, the head of the procuring agency must provide written justification for such an award and obtain the written approval of the Commissioner of Finance and Administration and the Comptroller of the Treasury.

- 5.3.2 After the agency head's determination, the State will issue an Evaluation Notice to identify the apparent best-evaluated proposals on the Evaluation Notice date detailed in the RFP Section 2, Schedule of Events.

**NOTICE: The Evaluation Notice shall not create rights, interests, or claims of entitlement in either the Proposers with apparent best-evaluated proposals or any other Proposer.**

- 5.3.3 The State will also make the RFP files available for public inspection on the Evaluation Notice date detailed in the RFP Section 2, Schedule of Events.

- 5.3.4 The Proposers with the apparent best-evaluated proposals must agree to and sign a contract with the State which shall be substantially the same as the RFP Attachment 6.1, *Pro Forma* Contract.

However, the State reserves the right, at its sole discretion, to add terms and conditions or to revise *pro forma* contract requirements in the State's best interests subsequent to this RFP process. No such terms and conditions or revision of contract requirements shall materially affect the basis of proposal evaluations or negatively impact the competitive nature of the RFP process.

- 5.3.5 The Proposers with the apparent best-evaluated proposals must sign and return the contracts drawn by the State pursuant to this RFP no later than the Contract Signature Deadline date detailed in the RFP Section 2, Schedule of Events. If a Proposer fails to provide the signed contract by the deadline, the State may determine that said Proposer is non-responsive to the terms of this RFP and reject the proposal.

- 5.3.6 If the State determines that an apparent best-evaluated proposal is non-responsive and rejects the proposal after opening Cost Proposals, the RFP Coordinator will re-calculate scores for each responsive Cost Proposal to determine the new, apparent best-evaluated proposal.

**ATTACHMENT 6.1****PRO FORMA CONTRACT**

The *pro forma* contract detailed in this attachment contains some “blanks” (signified by descriptions in capital letters) that will be completed with appropriate information in the final contract resulting from this RFP.

**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
AND  
[CONTRACTOR NAME]**

This Contract, by and between the State of Tennessee, Department of Finance and Administration, hereinafter referred to as the “State” and [CONTRACTOR LEGAL ENTITY NAME], hereinafter referred to as the “Contractor,” is for the provision of PowerBuilder development and support services, as further defined in the “SCOPE OF SERVICES.”

The Contractor is [AN INDIVIDUAL / A FOR-PROFIT CORPORATION / A NONPROFIT CORPORATION / A SPECIAL PURPOSE CORPORATION OR ASSOCIATION / A FRATERNAL OR PATRIOTIC ORGANIZATION / A PARTNERSHIP / A JOINT VENTURE / A LIMITED LIABILITY COMPANY]. The Contractor’s address is:

[ADDRESS]

The Contractor’s place of incorporation or organization is [STATE OF ORGANIZATION].

**A. SCOPE OF SERVICES:**

A.1. General Scope. The Contractor is to provide the State with PowerBuilder support (PBS) services as set forth in this Scope of Services and the State’s Request for Proposal number 317.03-111 (hereinafter referred to as the “RFP”), issued on November 17, 2003, which is incorporated herein and made a part of this Contract.

A.2. Job Classifications. Under the terms of this Contract and at the State’s request, the Contractor will provide to the State the services of the Job Classifications of personnel as described below and as listed in Contract Section C.3 (collectively, “personnel”). The baseline experience and skills sets required for each Job Classification follow the Job Classification names.

a. PowerBuilder Developer 1 – two (2) to five (5) years experience, including the following skills:

- i. PowerBuilder 7.0/8.0 or later
- ii. Oracle Database 8i, or later
- iii. EAS (Enterprise Application Server and CTS Jaguar as web server)
- iv. CTS Jaguar 4.2 or later
- v. UNIX, NT/XP/Windows 2000

b. PowerBuilder Developer 2 – six (6) or more years experience, including the following skills:

- i. PowerBuilder 7.0/8.0 or later
- ii. Oracle Database 8i, or later
- iii. EAS (Enterprise Application Server and CTS Jaguar as web server)
- iv. CTS Jaguar 4.2 or later



- v. UNIX, NT/XP/Windows 2000
- c. EAS Server Administrator – two (2) or more years experience managing and monitoring EAS 4.2 or later, including the following skills:
  - i. PowerBuilder 7.0/8.0 or later
  - ii. Oracle Database 8i, or later
  - iii. EAS (Enterprise Application Server and CTS Jaguar as web server)
  - iv. CTS Jaguar 4.2 or later
  - v. UNIX, NT/XP/Windows 2000

Proposed candidates must possess the experience pertinent to the Job Classification for which they are being proposed. Contractors shall not propose candidates that do not have the required experience.

- A.3. Amending Roles and Responsibilities. The specific roles and responsibilities of personnel shall be as defined in the Contract, RFP, and future Statements of Work (SOWs); provided, however, that the State reserves the right to amend these roles and responsibilities, as needed, to others within the required PBS skill sets, if this is deemed to be in the best interest of the State.
- A.4. On- and Off-Site Work. In most cases, Personnel shall be based and shall perform their work at State-operated, maintained, and managed facilities. The State reserves the right to request on-site or off-site work, whichever is deemed to be in the best interest of the project. State project coordinators shall make task assignments to the personnel, which shall be monitored and tracked by “Contractor Account Managers,” as described below.
- A.5. Contractor Account Managers. The Contractor shall assign, at its own expense, one or more Account Manager(s), to service the State’s needs under this Contract. The Account Manager shall:
  - a. monitor the assignment of tasks to Contractor personnel;
  - b. track performance and progress of the personnel toward the completion of the assigned tasks;
  - c. monitor the quality of services delivered; and
  - d. address any personnel issues that arise with regard to their Contractor personnel.

In the event that the State identifies problems with the services provided by Contractor personnel, the State shall make the Contractor Account Manager aware of the problems. The Contractor shall then act promptly to resolve the problems. If the State determines that the removal of Contractor personnel is in the best interest of the project, the Contractor Account Manager shall terminate the personnel from the State assignment and, if requested by the State, shall provide a replacement.

The Contractor agrees to maintain an adequate proportion of Account Manager(s) to assigned Contractor personnel to ensure the efficient performance of the Contract requirements.

- A.6. State Office Space and Work Environment. Commensurate with the needs of a given project, the State will provide personnel with office space, access to telephones, office supplies, workstations or terminals, and connections to the relevant State LAN/WAN and/or mainframe environment. The State shall be the sole determinant with regard to facilities, supplies, and equipment required for any given project.
- A.7. State May Execute Similar Contracts. The Contractor understands and agrees that the State has executed and may execute contracts with other parties for services the same as or similar to those described herein.
- A.8. State Right to Refuse Candidates. The State will request personnel as needed, in accordance with the provisions of the RFP. The Contractor agrees to make its best effort to provide personnel in the quantities requested by the State. The State will evaluate the qualifications of all individuals proposed,

and will request resumes, references, and/or face-to-face interviews to aid in this evaluation. The State reserves the right, throughout the life of this Contract, to refuse any individual proposed by the Contractor for a given position.

- A.9. State Not Obligated to Use Contractor Personnel. The purpose of this Contract is to establish potential sources of supply for PBS services personnel. However, due to the dynamic nature of projects within State government, the State cannot predict the numbers of personnel that will be required under this Contract. Therefore, the State makes no guarantees, either stated or implied, about the demand for resources provided through this procurement. The State is not obligated to use any of the Contractor's personnel. Throughout the term of the Contract, the State retains full control and flexibility with regard to the types, quantities, and timing of personnel usage.
- A.10. State's Technical Architecture. Contractor personnel shall provide all services requested through this RFP within the context of the technical environment described by the State's Technical Architecture. During the RFP proposal process, the Technical Architecture was provided at the vendor's request, and is herein incorporated as Contract Attachment A.
- A.11. Procedures/Stipulations for Providing PBS Personnel.
- A.11.a. Statement of Work.

The State will provide the Contractor with a Statement of Work (SOW) describing the required PBS services. (See RFP Attachment 6.6 for a sample SOW.) The SOW will be numbered to facilitate tracking and will include the following: a description of the requested work and the project begin and end dates. Most of these SOWs will be for timeframes shorter than one year, with projects of several weeks or a few months not being uncommon.

The Contractor will respond to the SOW with resumes and references for candidates that meet the requirements.

For any given SOW, the Contractor shall not provide resumes, references, or set up interviews, phone or otherwise, for any of its candidates prior to submitting a formal Project Offer for that SOW.

- A.11.b. Submission of Project Offer and Personnel Resumes.

Each SOW will specify the deadline for the Contractor to respond to the State's request. This time frame will be no less than five (5) business days, but it may be more at the State's discretion. Within the specified time frame--measured from the date the SOW was distributed--the Contractor must respond, either affirming or denying its ability to provide the personnel in the required project time frame. During this response period, if necessary, the Contractor may seek clarifications of the work involved.

The State expects the Contractor to respond fully to each SOW, with candidate(s) for all open position(s) listed on the SOW. This is the minimum requirement. The Contractor is encouraged to supply as many individuals as possible for each position, regardless of the number the State has requested in the SOW. The State is not limited, in terms of number of assignments offered, to the number of positions originally requested in the SOW and may offer more assignments, as business needs dictate.

If the Contractor is unable to provide the personnel requested, it must state this fact. Failure to respond at all, a late response, or lack of resumes and references shall be deemed a denial. See also Contract Section A.14, below.

Otherwise, if the Contractor is capable of providing the requested personnel, it will submit a "Project Offer," which will include the following items:

- i. Basic candidate information: Name and Date of Availability of the candidate.
- ii. Service Rate Per Hour for each resume submitted. If the SOW project dates span more than one year of the Contract term, the Contractor must provide rates for every effective year. In other words,

if the SOW Project Begin and End dates lie completely within year one of the Contract term, the Contractor would only provide one hourly rate. On the other hand, if the dates begin in year one and extend into any portion of year 2, the Contractor must propose rates for both years. If the Contract has been extended to include year three, then the same rule would apply: rates must be proposed for all effective years.

Service Rates may not exceed the Service Rates originally proposed in response to this RFP (i.e., as submitted on RFP Attachment 6.4). However, the Service Rates may be less, depending on the State's requirements, nature of the job market, and candidate's abilities. The Service Rates stated in the Project Offer, provided that they are less than those originally proposed, will apply to the SOW/MOU in question and will be used in lieu of the Service Rates stated in the Contract.

- iii. The resume(s) of the actual individual(s) proposed for the task or project in question. Each resume must include the results of two reference checks that the Contractor has performed on the proposed individual, including the names and telephone numbers of the references themselves. The Contractor will use standard State-supplied forms (RFP Attachment 6.8) to record the results of the reference checks. At least one of these reference checks must be from a supervisor; Contractors are not to submit reference checks from peers, colleagues, or subordinates of the candidate.

Project Offers submitted without resumes and reference checks will be rejected and will be considered a denial of that Contractor's ability to provide the personnel.

- iv. In response to a given SOW, the Contractor shall not submit the same individual for more than one Job Classification.

#### A.11.c. Evaluation of Candidates.

After the Project Offer Due Date, the State will prioritize the candidates from responsive Proposers in order, from low to high pricing. The resumes will then be reviewed.

The State will evaluate the resumes and references of submitted candidates. Assuming a given resume meets minimum SOW requirements, the State will contact the Contractor company to request an interview with the candidate. The State will attempt to conduct interviews in order from low to high pricing. However, the order in which the interviews are conducted may vary depending upon the availability of candidates for interviews. The Contractors will be responsible for setting up all interviews.

At the State's discretion, this initial interview may be conducted over the telephone. However, if the State is interested in the candidate, the State may, at its discretion, request a face-to-face interview. In this case, all expenses, travel or otherwise, resulting from such a request shall be borne by the Contractor.

The State will continue the interview process until the "best-qualified" individual is found. The best-qualified candidate will be lowest-priced candidate submitted that meets the SOW requirements. The State must have a legitimate rejection reason, directly related to one or more SOW requirements, to reject a lower-priced candidate in favor of a higher-priced one. After selecting the best-qualified candidate, the State will notify all Contractors regarding its selection.

#### A.11.d. Memorandum of Understanding.

After the State has selected the best-qualified candidate(s), it will develop a Memorandum of Understanding (MOU) binding the Contractor to the terms of the Contract. (See RFP Attachment 6.7 for a sample MOU.) Prior to Contractor personnel beginning their assignments with the State, the requesting State agency project coordinator, the agency's fiscal officer, the Office for Information Resources (OIR), and the Contractor jointly must sign the MOU.

A fully executed MOU, containing all of the above signatures, authorizes the Contractor to provide the requested services. The State will deliver to the Contractor a copy of the fully executed MOU. The Contractor must be in receipt of a fully executed MOU prior to Contractor personnel beginning work. The

State shall not be liable to pay the Contractor for any work performed prior to the Contractor's receipt of a fully executed MOU.

The MOU will also set the maximum amount of money to be paid in compensation for the services requested on a particular SOW (the "MOU Project Price"). This amount cannot be exceeded without an MOU amendment. Such an amendment, if deemed necessary by the State, would increase the maximum potential compensation due the Contractor for the work in question, and possibly extend the SOW Project End Date. The Amendment will require the same signatures as the original MOU. In some cases, and at the State's sole discretion, emails from signatories shall suffice as approval of MOU amendments. The State shall not be liable to pay the Contractor for any hours worked in excess of the most current approved MOU Project Price.

A.11.e. Continuity of Project Personnel.

The State encourages the Contractor to maintain continuity of personnel on projects assigned pursuant to an MOU. Continuity of personnel promotes efficiency in the performance of the SOW.

A.11.f. Double Submissions.

Two or more Contractors cannot submit the same candidate on the same Statement of Work (SOW). Each Contractor, prior to submitting an individual in response to an SOW, must obtain from that individual a signed Commitment Letter. The following rules apply:

- A.11.f.i. The letter must include the candidate's name, signature and date, and the number of the SOW in question. The SOW number is important, since it will identify the specific SOW for which this candidate is authorizing the submission of his or her resume. Blanket Commitment Letters covering multiple SOWs will not be allowed. The letter must also include some statement of the exclusive relationship that the candidate is entering into with regard to this particular SOW. The candidate must sign the letter and the signature must be dated no later than the Project Offer Due Date.
- A.11.f.ii. The Contractor company will retain this letter in its files. In the event of a double-submission, the State will request a copy of the Commitment Letter from both vendors. The submission from the Contractor that can produce a valid letter will be honored; the other Contractor's project offer will be rejected. If neither or both Contractor(s) can produce a valid letter, the candidate will be rejected.

A.11.g. Work Visas and Two-Week Notices.

The State expects candidates proposed to be ready to begin work on the Project Begin Date stated in the SOW. Historically, activities such as securing work visas and turning in two-week notices have delayed start dates. Contractors must take these sorts of delays into account when proposing candidates and only submit candidates that can begin work on the stated Project Begin Date.

A.11.h. Offer of a State Assignment.

The Contractor shall not represent to the proposed candidate that he or she has been offered a State assignment prior to receiving an email from the State agency project coordinator stating that the project coordinator has selected the candidate.

Even after the project coordinator has notified the Contractor of the candidate selection, there are several more steps that must be completed before the Contractor will receive a fully executed MOU. For various reasons the MOU may not be signed. Therefore, a written notice of candidate selection is not a guarantee of assignment with the State.

- A.11.i. Job Classification Service Rates for Optional Extension Year 3. In Contract Section B.2, the State describes an option to extend the contract for an additional year, for a total Contract term of three (3) years. In response to this RFP, Proposers will only propose maximum rates for years 1 and 2, and will be evaluated on these rates alone. If the contract is extended, the maximum allowable Service Rates for year 3 will be determined as described in the *pro forma* contract, Section C.4.

- A.12. Evaluation of Services Provided. The quality of the services provided and the progress on each State-assigned task shall, at the State's discretion, be evaluated.
- A.12.a. At the State's option, an evaluation of the services provided will occur by the end of the fifth working day. If, at this time, the services provided are deemed to be unacceptable, the State will notify the Contractor, and Contractor agrees to remove the individual assigned. The State will provide such notification to the Contractor no later than the end of the fifth working day of the individual's assignment. In this event, the State will not pay for the hours worked and will not be liable to the Contractor for any costs or damages.
- A.12.b. The above provisions shall be in addition to the termination provisions stated elsewhere herein.
- A.12.c. The termination of an individual's assignment will not necessarily result in the termination of the MOU related to that individual.
- A.13. Replacement Personnel. At the State's request, the Contractor will replace an individual that the Contractor has removed from State assignment, or that has voluntarily withdrawn, with an individual of equal or greater qualifications. The pay rate shall remain the same. Any requirement for such replacement will be at the State's sole discretion; the State is not obligated to accept replacement of removed or withdrawn individuals.
- A.14. Contractor Performance Measures. The success of this multiple-source procurement mechanism depends upon the Contractor responding to every SOW and providing resumes for every Job Classification requested therein. The following provisions apply:
- A.14.a. After Project Offers have been processed for a given SOW, the State agency project coordinator will send the Office for Information Resources (OIR) PBS Contract Administrator a report stating which Contractors have provided candidates with the required experience levels, and which have not.
- A.14.b. Failure of a Contractor to propose a candidate with the required experience levels in excess of five (5) times over the life of the contract may, at the State's discretion, result in the State terminating or restricting its Contract with the Contractor, as described below.
- A.14.c. If the Contractor fails to comply with the performance standards in Contract Section A.14.a, and the Contractor is not providing services pursuant to any MOU at the time of non-compliance, the State may, at its option, terminate the Contract.
- A.14.d. In the event a Contractor fails to comply with the performance standards in Section A.14.a, and if the Contractor is providing services pursuant to one or more MOU(s) at the time of non-compliance, the State may, at its option, restrict the Contract and the Contractor shall not be allowed to participate in any future SOWs. The remainder of the Contract stipulations shall remain in effect to the extent necessary to allow the Contractor to complete the provision of services pursuant to the MOU(s).
- A.14.e. In the event of Contract termination or restriction as described herein, nothing shall prevent the State from awarding a replacement contract to another Contractor that originally responded to this RFP.
- A.15. Restrictions on Personnel Movement/Transfers. The Contractor shall not solicit contractor staff from other companies that are assigned to State projects. Furthermore, the State will not accept staff movement among companies, or from an existing SOW to a new SOW for the same company, while the individuals are engaged in State assignments.
- A.16. Deriving Service Rates for Project End Date Extensions. In some cases, the Project End Dates on SOWs/MOUs may be extended beyond what was anticipated when the SOW was originally distributed. This may mean that the Contractor has only proposed a rate for year one (1) on an SOW/MOU that is being extended into year two (2); i.e., there would be no agreed upon hourly rate for year 2. Since there is no rate proposed for year 2, the State will derive the year 2 rate using the Consumer Price Index, in a manner similar to that described in Section C.4 of the *pro forma* contract, using the year 1 Service Rate as the base.

Any such CPI increase shall obey the rule that the adjusted rate cannot exceed the originally proposed Ceiling Rate. The adjusted rate will be the lesser of the originally proposed rate or the computation of the new rate based on the CPI as described in *pro forma* contract Section C.4. A situation requiring the application of this rule could occur if the Proposer originally proposed the same Ceiling Rate for years 1 and 2 in response to the RFP, and if the individual were proposed in year 1 at this Ceiling Rate, or only slightly below it. For example, assume the Originally proposed Ceiling Rates for a given Job Classification were the same for year 1 and year 2--\$50.00. Now, a candidate is proposed for a year 1 project with a rate of 49.80, and the project is extended into year 2. The CPI is 1.6%. The rate will not be increased to \$50.60, which is the rate derived by application of the CPI; instead, the rate will be capped at \$50.00, the originally proposed Ceiling Rate for year 2.

A.17. Miscellaneous Policies and Procedures.

A.17.a. Parking. The State will not provide parking for Contractor personnel.

A.17.b. State Clinic. Contractor personnel do not have access to the State clinic.

A.17.c. Wireless Phones and Pagers. If the State deems it necessary to the effective performance of Contractor personnel's assignments, the State will provide wireless phones or pagers to the personnel, at the State's expense. This expense must be supported and justified by the contractor personnel's State project coordinator. The State project coordinator will be required to sign all invoices for wireless phone or pager expenses prior to payment. Contractor personnel shall use such equipment only for State-assignment-related activities.

The State will not reimburse the Contractor or Contractor personnel for wireless phones or pagers not provided by the State.

A.17.d. State Vehicles. Contractor personnel may not reserve and/or operate State vehicles.

A.18. Contractor Responsible for Training in Changed Technology.

The State makes changes to its Technical Architecture and the technical nature of assignments from time to time. If a contract individual is assigned to a State project or support area and the technology associated with their assignment changes, the Contractor is responsible for the expenses associated with training in the new or changed technology. This responsibility includes all fees associated with the actual training course, travel expenses, and also the hours the individual spends in training. *For example: Assume a contract individual needs training in a particular version of PowerBuilder in order to perform their State assignment. The cost of the course, including any travel expenses, will be the responsibility of the Contractor company and the training hours will not be billable to the State.* The maximum liability to the Contractor firm for training hours for any individual will be two weeks per year. A "year" is defined in this case as a Contract year, the period of time from the Contract Begin Date to the first anniversary of the Contract Begin Date, and subsequent years thereafter.

A.19. Computer Access Security Agreement/Code of Ethics. Contractor personnel assigned to the State will be required to sign Computer Access Security Agreement and Code of Ethics forms as required of the State's own employees (See RFP Attachment 6.9), and any other forms that shall be required by the State to ensure the security and ethical use of the State's computer resources.

A.20. Additional Policies and Procedures. The State will promulgate additional policies and procedures, manual or electronic, to govern requests for PBS services as needed, throughout the life of the Contract resulting from this RFP. The State also reserves the right to amend existing policies and procedures and to change the format and content of the SOW and MOU, if such is deemed to be in the best interest of the project or task in question.

B. CONTRACT TERM:

- B.1. Contract Term. This Contract shall be effective for the period commencing on February 5, 2004 and ending on February 4, 2006. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.
- B.2. Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than three (3) years, provided that the State notifies the Contractor in writing of its intention to do so at least sixty (60) days prior to the contract expiration date. An extension of the term of this Contract will be effected through an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the State's maximum liability will also be effected through an amendment to the Contract and shall be based upon rates provided for in the original contract.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed [WRITTEN DOLLAR AMOUNT] (\$[NUMBER AMOUNT]). The Service Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Service Rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Service Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The Service Rates and the Maximum Liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the Service Rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service or project milestones defined in Section A. The Contractor shall be compensated based upon the following Service Rates:

**SERVICE RATE PER HOUR**

<u>JOB CLASSIFICATION</u>	<u>YEAR 1</u>	<u>YEAR 2</u>
PowerBuilder Developer 1	\$XXX.XX	\$XXX.XX
PowerBuilder Developer 2	\$XXX.XX	\$XXX.XX
EAS Server Administrator	\$XXX.XX	\$XXX.XX

The Contractor will propose new Service Rates, not to exceed the Service Rates stated in Section C.3, as a part of its "Project Offer" response to each SOW. The proposed Project Offer Service Rates shall be the rates in effect for a given SOW/MOU.

Service Rates for Year 2 take effect on the anniversary of the Contract effective date given in Section B. The years associated with the Service Rates in this Section refer to the year in which the work was actually performed, and the Contractor shall bill accordingly.

The Contractor shall not be compensated for travel time to the primary location of service provision.

The services shall be provided and invoiced on an hourly basis, as used, up to the MOU Project Price stated in the MOU. The Contractor shall submit monthly invoices for completed work, in form and

substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Invoices shall be submitted directly to the State agency and individual named in the relevant MOU. Such invoices shall, at a minimum, include the name of each individual, the individual's job title, the number of hours worked during the period, the applicable Service Rate, the total compensation requested for the individual, and the total amount due the Contractor for the period invoiced. The State shall be the sole determinant with regard to timing, format, and content of Contractor Invoices. The State will not modify its invoicing process to accommodate the Contractor's accounting system(s).

- C.4. The Service Rates in Section C.3 are firm for the duration of the Contract. In the event that the term of the Contract (or MOU) is extended, the State will execute a Contract amendment to adjust these rates for inflation based on the Consumer Price Index (CPI). The rates shall be adjusted in accordance with the CPI for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100 (the "Index") published by the Bureau of Labor Statistics, U.S. Department of Labor, Washington, D.C., or its successor index. In the event said Index ceases publication, the adjustment shall be determined by using the CPI for Urban Wage Earners and Clerical Workers (CPI-W) for the U.S. City Average for the same area coverage; or, if not available, then according to the Index most comparable to the Index for All Urban Consumers.

The Year 2 Service Rates, or relevant Project Offer rates, shall be used as the base. Adjustments to this base shall equal the percentage change determined from the Index for the year ending on December 31st of the year preceding the year of Contract (or MOU) termination, after comparing it to the Index ending on December 31st of the next preceding year. The amended Service Rates shall take effect on the anniversary of the Contract effective date given in Section B. Once adjusted, the new Unit Rates shall apply for one (1) year, for the term of the MOU, or throughout the remaining term of the Contract, as extended; whichever is applicable.

- C.5. Travel Compensation. With regard to Travel, the following provisions shall apply:
- C.5.a. The "Official Station," which is defined as the location at which Contractor personnel shall perform the major portion of their duties, will be designated by the State in the SOW. In most cases this will be Nashville, Tennessee.
- C.5.b. Neither the Contractor, its personnel, nor its agents shall be eligible for reimbursements for any travel expenses related to work performed at the Official Station. This includes, but is not limited to, travel to and from the Official Station, and food and lodging therein.
- C.5.c. In some cases, at the State's request and with prior written approval, Contractor personnel may be required to travel and work away from the Official Station. Such travel expenses shall be reimbursed in accordance with the *State of Tennessee Comprehensive Travel Regulations*, as amended from time to time (see <http://www.state.tn.us/finance/act/policy.html>).
- C.5.d. Compensation to the Contractor for State-authorized travel, meals and/or lodging shall be in the amount of actual costs, subject to maximum amounts and limitations specified in the State's *Comprehensive Travel Regulations*, as amended from time to time.
- C.6. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.
- C.8. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form



has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination" (sections D.6. and D.7.). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Records. The Contractor shall maintain documentation for all charges against the State under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.9. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.

- D.10. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.11. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.12. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.13. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.14. Force Majeure. The obligations of the parties to this contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- D.15. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.16. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under **Tennessee Code Annotated**, Sections 9-8-101 through 9-8-407.
- D.17. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.18. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at

the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:

Hope Bragg, Director  
Systems Development and Support  
Department of Finance and Administration  
18<sup>th</sup> Flr, Wm Snodgrass Tenn Tower  
312 8<sup>th</sup> Avenue North  
Nashville, TN 37243-1510  
Tele: (615) 741-5161  
Fax: (615) 741-4589

The Contractor:

[NAME AND TITLE OF CONTRACTOR CONTACT PERSON]  
[CONTRACTOR NAME]  
[ADDRESS]  
[TELEPHONE NUMBER]  
[FACSIMILE NUMBER]

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. State Ownership of Work Products. The State shall have all ownership right, title, and interest, including ownership of copyright, in all work products created, designed, developed, derived, documented, installed, or delivered to the State under this Contract. The State shall have royalty-free, exclusive, and unlimited rights to use, disclose, reproduce, or publish, for any purpose whatsoever, all said work products. The Contractor shall furnish such information and data upon request of the State, in accordance with the Contract and applicable State law.
- E.5. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the residual value of the property at the time of loss.
- E.6. Incorporation of Additional Documents. Included in this Contract by reference are the following documents:
- a. The Contract document and its attachments;
  - b. All Clarifications and addenda made to the Contractor's Proposal;
  - c. The Request for Proposal and its associated amendments;
  - d. Statements of Work and Memoranda of Understanding;

e. The Contractor's Proposal

In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence detailed above.

E.7. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed.

E.8. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

E.9. HIPAA Compliance. Contractor warrants to the State that it is familiar with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this contract. Contractor warrants that it will cooperate with the State in the course of performance of the contract so that both parties will be in compliance with HIPAA, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations. Contractor will sign any documents that are reasonably necessary to keep the State and Contractor in compliance with HIPAA, including but not limited to business associate agreements.

E.10. Information Security Compliance. Contractor warrants to the State that it is familiar with the requirements of the State of Tennessee Information Technology Security Policies (these will be provided to the apparent winner[s]) and any accompanying state and federal regulations, and will comply with all applicable requirements in the course of this contract. Contractor warrants that it will cooperate with the State in the course of performance of the contract so that both parties will be in compliance with State Information Technology requirements and any other state and federal computer security regulations including cooperation and coordination with State computer security officials and other compliance officers required by its regulations. Contractor agrees to enter into a connectivity agreement with the State. The agreement will include, but not be limited to, the following:

- a. Not attaching any non-state owned computers to any state network without previous State-provided, written certificate of compliance with minimum state security standards;
- b. All client and server computer security settings must be maintained to meet or exceed minimum state security standards;
- c. Once established, no security provisions for firewalls, client and server computers will be modified without written state approval;

- d. Current updated virus software and virus definition files that are enabled to perform real time scans will be maintained on all contractor-supplied hardware;
- e. Dialup modem use is specifically disallowed while attached to the state network;
- f. Contractor will not install or utilize remote control or file sharing software unless explicitly approved by the State;

Contractor will sign any documents that are reasonably necessary to keep the Contractor in compliance with the State of Tennessee Computer Security Policies.

Contractor staff may be required to undergo background checks.

- E.11. Contractor Personnel Performance Problems. The State shall be the sole judge of the quality of services provided and the project progress achieved by the Contractor's personnel. The Contractor agrees to remove and replace at the Contractor's expense, personnel judged by the State as not making substantial contributions to the projects to which Contractor's personnel are assigned. The Contractor agrees not to charge the State for services performed which the State designates as being unacceptable.
- E.12. Mandatory Attendance and Leave Documentation. Contractor personnel shall maintain and sign State-provided timesheets to verify the number of hours worked. The Contractor Account Manager will also be required to sign the timesheets and include these with the Contractor's invoice. The State is not obligated to sign or otherwise authorize Contractor-provided attendance and leave documents.
- E.13. State's Electronic Time Tracking System. Contractor personnel shall enter their hours worked into "Multitrak," the State's automated time and Request for Service (RFS) tracking system. Contractor personnel shall exercise due diligence to ensure that hours worked as entered into Multitrak exactly match hours worked as indicated on the timesheets for each pay-period. Multitrak reports will serve as the State's authorization to the Contractor to bill the State for the hours worked, and will be included, along with the signed timesheets, as supporting documentation with every invoice submitted.
- E.14. Solicitation of State Employees Prohibited. The Contractor shall not solicit State employees in State facilities or during State work hours for the purpose of employment. For the purposes of this paragraph, "State work hours" are defined as 8:00 a.m. to 5:00 p.m., CT, Monday through Friday, including flextime and overtime, but excluding State holidays.
- E.15. State Employment of Contractor Personnel. The State reserves the right to offer employment to Contractor personnel at any point during the personnel's assignment with the State.
- E.16. Fair Competition on Future RFPs. If the Contractor, through any of its employees provided under this contract, is involved in assisting the State in the development, formulation, and/or drafting of an RFP or ITB for the State, it cannot submit proposals in response to that RFP or ITB.
- E.17. Additional Termination Provisions.
  - E.17.a. The State may terminate any or all of the MOUs entered into by the State and the Contractor pursuant to this Contract by giving the Contractor at least fifteen (15) calendar days written notice prior to the effective MOU Termination Date. The Contractor shall be entitled to receive equitable compensation for satisfactory authorized services completed as of the termination date.
  - E.17.b. If the Contractor, or Contractor-provided personnel, fail to properly perform their obligations under any MOU entered into by the State and the Contractor pursuant to this Contract, or violate any of the terms of this Contract, the State shall have the right to immediately terminate any or all of the Contractor's MOUs, and to withhold payments in excess of fair compensation for completed services. The Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
  - E.17.c. In the event of Contract termination, the State is free to enter into a Contract with another responsive Proposer to the RFP.

- E.18. Date/Time Hold Harmless. As required by **Tennessee Code Annotated**, Section 12-4-118, the contractor shall hold harmless and indemnify the State of Tennessee; its officers and employees; and any agency or political subdivision of the State for any breach of contract caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort or otherwise process dates or times.
- E.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by **Tennessee Code Annotated**, Section 8-6-106.

- E.20. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in **Tennessee Code Annotated**, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System, provides that if a retired member returns to State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to the Tennessee Consolidated Retirement System the amount of retirement benefits the Contractor received from the Retirement System during the period of this Contract.

IN WITNESS WHEREOF:

[CONTRACTOR LEGAL ENTITY NAME]:

---

[NAME AND TITLE]

Date

DEPARTMENT OF FINANCE AND ADMINISTRATION:

---

M. D. Goetz, Jr., Commissioner

Date

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

---

M. D. Goetz, Jr., Commissioner

Date

COMPTROLLER OF THE TREASURY:

---

John G. Morgan, Comptroller of the Treasury

Date

## CONTRACT ATTACHMENT A

*When the contract is executed, the State Technical Architecture will be included here. The version to be included is the version that was distributed, at the Proposer's request, during the RFP and Proposal process.*



**ATTACHMENT 6.2****PROPOSAL TRANSMITTAL AND STATEMENT OF CERTIFICATIONS AND ASSURANCES**

*The Proposer must complete and sign this Technical Proposal Transmittal. It must be signed, in the space below, by an individual empowered to bind the proposing entity to the provisions of this RFP and any contract awarded pursuant to it. If said individual is not the Proposer's chief executive, this document shall attach evidence showing the individual's authority to bind the proposing entity.*

**PROPOSER LEGAL ENTITY NAME:** \_\_\_\_\_

**PROPOSER FEDERAL EMPLOYER IDENTIFICATION NUMBER:**  
(or Social Security Number) \_\_\_\_\_

**The Proposer does hereby affirm and expressly declare confirmation, certification, and assurance of the following:**

- 1) This proposal constitutes a commitment to provide all services as defined in the RFP Attachment 6.1, *Pro Forma* Contract Scope of Services for the total contract period and confirmation that the Proposer shall comply with all of the provisions in this RFP and shall accept all terms and conditions set out in the RFP Attachment 6.1, *Pro Forma* Contract.
- 2) The information detailed in the proposal submitted herewith in response to the subject RFP is accurate.
- 3) The proposal submitted herewith in response to the subject RFP shall remain valid for at least 120 days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any contract pursuant to the RFP.
- 4) The Proposer's shall comply with:
  - a) the laws of the State of Tennessee;
  - b) Title VI of the federal Civil Rights Act of 1964;
  - c) Title IX of the federal Education Amendments Act of 1972;
  - d) the Equal Employment Opportunity Act and the regulations issued thereunder by the federal government;
  - e) the Americans with Disabilities Act of 1990 and the regulations issued thereunder by the federal government;
  - f) the condition that the submitted proposal was independently arrived at, without collusion, under penalty of perjury; and,
  - g) the condition that no amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Proposer in connection with the Procurement under this RFP.
- 5) The Proposer shall comply with all of the provisions in the subject RFP and shall accept all terms and conditions set out in the RFP Attachment 6.1, *Pro Forma* Contract.

**SIGNATURE & DATE:** \_\_\_\_\_

## ATTACHMENT 6.3

<b>TECHNICAL PROPOSAL &amp; EVALUATION GUIDE — SECTION A</b> (instructions and State Use Only areas are shaded)		
<b>PROPOSER NAME:</b>		
<b>SECTION A — MANDATORY REQUIREMENTS</b>		
<p>The Proposer must address ALL Mandatory Requirements section items and provide, in sequence, the information and documentation as required (referenced with the associated item references). The RFP Coordinator will review all general mandatory requirements, including but not limited to the following:</p> <ul style="list-style-type: none"> <li>▪ Proposal received on or before the Proposal Deadline.</li> <li>▪ Technical Proposal copies and Cost Proposal packaged separately.</li> <li>▪ Technical Proposal contains NO cost data.</li> <li>▪ Proposer did NOT submit alternate proposals.</li> <li>▪ Proposer did NOT submit multiple proposals in a different form.</li> <li>▪ Technical Proposal does NOT contain any restrictions of the rights of the State or other qualification of the proposal.</li> </ul> <p>The RFP Coordinator will also review the proposal to determine if the Mandatory Requirement Items (below) are met and mark each with pass or fail. For each requirement that is not met, the Proposal Evaluation Team must review the proposal and attach a written determination.</p> <p><b>NOTICE:</b> In addition to these requirements, the State will also evaluate compliance with ALL RFP requirements.</p>		
Proposal Page # (to be completed by Proposer)	Mandatory Requirement Items	State Use ONLY
		Pass/Fail
	<b>A.1</b> Provide the Proposal Transmittal and Statement of Certifications and Assurances (detailed in RFP Attachment 6.2) completed and signed, in the space provided, by an individual empowered to bind the Proposer to the provisions of this RFP and any resulting contract.  <b><i>Each Proposer <u>must</u> sign the Proposal Transmittal and Statement of Certifications and Assurances without exception or qualification.</i></b>	
	<b>A.2</b> Provide the following as documentation of financial responsibility and stability. <ul style="list-style-type: none"> <li>▪ a current written bank reference, in the form of a standard business letter, indicating that the Proposer's business relationship with the financial institution is in positive standing</li> <li>▪ two current written, positive credit references, in the form of standard business letters, from vendors with which the Proposer has done business; or, documentation of a positive credit rating determined by an accredited credit bureau within the last 6 months</li> <li>▪ written confirmation that upon execution of a contract resulting from this RFP, the Proposer, as Contractor, will</li> </ul>	

	provide a copy of a valid certificate of insurance indicating liability insurance in the amount of at least One Million Dollars (\$1,000,000.00)	
	<p><b>A.3</b> Provide a statement of whether the Proposer or any individual who shall perform work under the contract has a possible conflict of interest (e.g., employment by the State of Tennessee) and, if so, the nature of that conflict.</p> <p><b><i>Any questions of conflict of interest shall be solely within the discretion of the State, and the State reserves the right to cancel any award.</i></b></p>	

## TECHNICAL PROPOSAL & EVALUATION GUIDE — SECTION B

(instructions and State Use Only areas are shaded)

<b>PROPOSER NAME:</b>	
<b>SECTION B — QUALIFICATIONS &amp; EXPERIENCE</b>	
<p>The Proposer must address ALL Qualifications and Experience section items and provide, in sequence, the information and documentation as required (referenced with the associated item references).</p> <p>A Proposal Evaluation Team, made up of three or more State employees, will independently evaluate and score the proposal's "qualifications and experience" responses.</p>	
<b>Proposal Page # (to be completed by Proposer)</b>	<b>Qualifications &amp; Experience Items</b>
	<b>B.1</b> Describe the Proposer's form of business ( <i>i.e.</i> , individual, sole proprietor, corporation, non-profit corporation, partnership, limited liability company) and detail the name, mailing address, and telephone number of the person the State should contact regarding the proposal.
	<b>B.2</b> Provide a statement of whether there have been any mergers, acquisitions, or sales of the Proposer company within the last ten years, and if so, an explanation providing relevant details.
	<b>B.3</b> Provide a statement of whether the Proposer or any of the Proposer's employees, agents, independent contractors, or subcontractors have been convicted of, pled guilty to, or pled <i>nolo contendere</i> to any felony, and if so, an explanation providing relevant details.
	<b>B.4</b> Provide a statement of whether there is any pending litigation against the Proposer; and if such litigation exists, an attached opinion of counsel as to whether the pending litigation will impair the Proposer's performance in a contract under this RFP.
	<b>B.5</b> Provide a statement of whether, in the last ten years, the Proposer has filed (or had filed against it) any bankruptcy or insolvency proceeding, whether voluntary or involuntary, or undergone the appointment of a receiver, trustee, or assignee for the benefit of creditors, and if so, an explanation providing relevant details.
	<b>B.6</b> Provide a statement of whether there are any pending Securities Exchange Commission investigations involving the Proposer, and if such are pending or in progress, an explanation providing relevant details and an attached opinion of counsel as to whether the pending investigation(s) will impair the Proposer's performance in a contract under this RFP.
	<b>B.7</b> Provide a brief, descriptive statement indicating the Proposer's credentials to deliver the services sought under this RFP.
	<b>B.8</b> Briefly describe how long the Proposer has been performing the services required by this RFP and include the number of years in business.
	<b>B.9</b> Describe the Proposer organization's number of employees, client base, and location of offices.

	<p><b>B.10</b> Provide a statement of whether the Proposer intends to use subcontractors, and if so, the names and mailing addresses of the committed subcontractors and a description of the scope and portions of the work the subcontractors will perform.</p>
	<p><b>B.11</b> Provide documentation of Proposer commitment to diversity as represented by its business strategy, business relationships, and workforce — this documentation should detail:</p> <ul style="list-style-type: none"> <li>▪ a description of the Proposer's existing programs and procedures designed to encourage and foster commerce with business enterprises owned by minorities, women, persons with a disability and small business enterprises</li> <li>▪ a listing of the Proposer's current contracts with business enterprises owned by minorities, women, persons with a disability and small business enterprises, including the following information <ul style="list-style-type: none"> <li>○ contract description and total dollar value</li> <li>○ contractor name and ownership characteristics (<i>i.e.</i>, ethnicity, sex, disability)</li> <li>○ contractor contact and telephone number</li> </ul> </li> <li>▪ an estimate of the level of participation by business enterprises owned by minorities, women, persons with a disability and small business enterprises in a contract awarded to the Proposer pursuant to this RFP, including the following information: <ul style="list-style-type: none"> <li>○ participation estimate (expressed as a percent of the total contract value that will be dedicated to business with subcontractors and supply contractors having such ownership characteristics)</li> <li>○ descriptions of anticipated contracts</li> <li>○ names and ownership characteristics (<i>i.e.</i>, ethnicity, sex, disability) of anticipated subcontractors and supply contractors anticipated</li> </ul> </li> <li>▪ the percent of the Proposer's total current employees by ethnicity, sex, and disability</li> </ul> <p><b><i>Firms who demonstrate diversity within their programs and policies are assisting the State in achieving its goals in building a more reflective marketplace of the community within this state. Proposal evaluations will recognize the positive qualifications and experience of a Proposer that does business with enterprises owned by minorities, women, persons with a disability and small business enterprises and that offers a diverse workforce to meet service needs.</i></b></p>
	<p><b>B.12</b> Provide customer references for similar projects representing three of the larger accounts currently serviced by the vendor, or that the vendor has serviced within the last three (3) years. In addition, provide references, if any, for all current contracts with the State of Tennessee and all those completed within the previous five-year period.</p> <p>Each non-State reference must include:</p> <ul style="list-style-type: none"> <li>▪ the company name and business address;</li> <li>▪ the name, title, telephone number, and email address of the company contact knowledgeable about the project work; and</li> <li>▪ a brief description of the service provided and the period of service.</li> </ul>

	<p>The State of Tennessee references must include:</p> <ul style="list-style-type: none"> <li>▪ the contract number;</li> <li>▪ the contract term;</li> <li>▪ the procuring state agency; and</li> <li>▪ the State contact name and telephone number for each reference.</li> </ul> <p><b><i>Each evaluator will generally consider the results of reference inquiries by the State regarding <u>all</u> references provided (both State and non-State). Current or prior contracts with the State are not a prerequisite and are not required for the maximum evaluation score possible, and the existence of such contracts with the State will not automatically result in the addition or deduction of evaluation points.</i></b></p>
<p>(Maximum Section B Score = <b>35</b>)</p>	
<p><b>SCORE (for <u>all</u> Section B items above, B.1 through B.12):</b></p>	

**TECHNICAL PROPOSAL & EVALUATION GUIDE — SECTION C**

(instructions and State Use Only areas are shaded)

**PROPOSER NAME:****SECTION C — TECHNICAL APPROACH**

The Proposer must address ALL Technical Approach section items and provide, in sequence, the information and documentation as required (referenced with the associated item references). A Proposal Evaluation Team, made up of three or more State employees, will independently evaluate and score the proposal's response to each item. Each evaluator will use the following whole number, raw point scale for scoring each item:

*0 = little value**1 = poor**2 = fair**3 = satisfactory**4 = good**5 = excellent*

The RFP Coordinator will multiply each item score by the assigned weight with the product being the item's raw weighted score for purposes of calculating the section score as detailed at the end of this table.

Proposal Page # (to be completed by Proposer)	Technical Approach Items	State Use ONLY		
		Score	Item Weight	Raw Weighted Score
	<b>C.1</b> Provide a narrative that illustrates the Proposer's understanding of the State's requirements.		3	
	<b>C.2</b> Provide a narrative that illustrates how the Proposer will complete the scope of services, and accomplish required objectives.		5	
	<b>C.3</b> Describe how your company would rapidly respond to widely varying levels of staffing. For example, the State may not require any Contractor personnel for several weeks, and then have an immediate need for several PBS services personnel. Describe, in some detail, how the Proposer would meet this staffing need. If your company does not have an office or employee presence in the Nashville area, describe how you would overcome this limitation. Limit your response to 1,000 words.		10	
	<b>C.4</b> Indicate if the process you described in C.3, above, is currently in place, or if it would require the Proposer to institute new procedures and possibly hire additional personnel not currently on staff.		5	
	<b>C.5</b> Describe your company's approach and methods for retaining a stable staff. Include processes you have in place for motivating your staff to perform at their maximum capability. Also, address plans you have for ensuring technical competence in a changing technological environment.		5	
<b>Total Raw Weighted Score:</b> (sum of Raw Weighted Scores above)				

<div>Total Raw Weighted Score</div> <div>maximum possible raw weighted score (140)</div>	<div>x 25</div> <div>(maximum section score)</div>	<div>= SCORE:</div>	
--	--	---------------------	--



**ATTACHMENT 6.4****COST PROPOSAL & SCORING GUIDE**

(instructions and State Use Only areas are shaded)

**NOTICE TO PROPOSER: This Cost Proposal MUST be completed EXACTLY as required by RFP section 3.3, et seq..****PROPOSER NAME:****SIGNATURE & DATE:**

*NOTE: The signatory must be an individual or a company officer empowered to contractually bind the Proposer. If the Signatory is not the Proposer company president, this Statement of Certifications and Assurances SHALL attach evidence showing the Signatory's authority to bind the Proposer.*

**COST PROPOSAL SCHEDULE**

The proposed cost, detailed below, shall indicate the proposed price for providing the entire scope of service including all services as defined in the RFP Attachment 6.1, *Pro Forma Contract Scope of Services* for the total contract period. The proposed cost and the submitted technical proposal associated with this cost shall remain valid for at least 120 days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any resulting contract between the Proposer and the State. All monetary amounts are United States currency.

Cost Item Description	Proposed Cost		State Use ONLY		
	Year 1	Year 2	Sum	Weight	Weighted Cost
POWERBUILDER DEVELOPER 1				1	
POWERBUILDER DEVELOPER 2				1	
EAS SERVER ADMINISTRATOR				1	
<i>The RFP Coordinator shall use the evaluation cost amount derived from the proposed cost amounts above and the following formula to calculate the COST PROPOSAL SCORE. Calculations shall result in numbers rounded to two decimal places.</i>					<b>Evaluation Cost Amount:</b> <i>(sum of all weighted cost amounts above)</i>
<b>lowest Evaluation Cost Amount from <u>all</u> Proposals</b> <b>Evaluation Cost Amount being evaluated</b>					<b>x 40</b> <i>(maximum section score)</i>
					<b>= SCORE:</b>

**ATTACHMENT 6.5****PROPOSAL SCORE SUMMARY MATRIX**

(the RFP Coordinator will use as many sheets as necessary to summarize scores for all Proposers evaluated)

RFP Coordinator			Date			
<b>QUALIFICATIONS &amp; EXPERIENCE</b> Maximum Points: 35	PROPOSER NAME		PROPOSER NAME		PROPOSER NAME	
EVALUATOR NAME						
EVALUATOR NAME						
EVALUATOR NAME						
EVALUATOR NAME						
REPEAT AS NECESSARY						
	<b>AVERAGE SCORE:</b>		<b>AVERAGE SCORE:</b>		<b>AVERAGE SCORE:</b>	
<b>TECHNICAL APPROACH</b> Maximum Points: 25						
EVALUATOR NAME						
EVALUATOR NAME						
EVALUATOR NAME						
EVALUATOR NAME						
REPEAT AS NECESSARY						
	<b>AVERAGE SCORE:</b>		<b>AVERAGE SCORE:</b>		<b>AVERAGE SCORE:</b>	
<b>COST PROPOSAL</b> Maximum Points: 40	<b>SCORE:</b>		<b>SCORE:</b>		<b>SCORE:</b>	
<b>PROPOSAL SCORE</b> Maximum Points: 100	<b>TOTAL SCORE:</b>		<b>TOTAL SCORE:</b>		<b>TOTAL SCORE:</b>	

<b>SOW No:</b>	<b>Master Contract No:</b>
<b>Abbreviated Task Description (Attach Additional Detail, as Needed):</b>	
<b>Job Classification/Number of Personnel (Attach Additional Detail, as Needed):</b>	
<b>Project Begin Date:</b>	<b>Project End Date:</b>
<b>Project Offer must be received at State offices by no later than:</b>	

**ATTACHMENT 6.7****SAMPLE**

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
STATE OF TENNESSEE  
DEPARTMENT OF NAME OF REQUESTING AGENCY  
AND  
NAME OF CONTRACTOR**

This agreement, by and between the State of Tennessee, Department of NAME OF REQUESTING AGENCY, hereinafter referred to as the "State" and NAME OF CONTRACTOR, hereinafter referred to as the "Contractor" is as follows:

The Contractor understands and agrees that this Memorandum of Agreement (MOU) is governed by the provisions of Finance and Administration Contract Number FA-XX-XXXXXX-00, hereinafter referred to as the "Master Contract." In the provision of services pursuant to this Memorandum of Understanding, the Contractor will conform to these provisions in their entirety. In the event of a conflict between the MOU (and its Addenda), and the Master Contract, the documents shall govern in the order of preference given in the Master Contract.

The Contractor agrees to provide the services as described in this MOU and these addenda:

1. Statement of Work
2. Addendum A
3. Addendum B
4. etc.

In no event shall the maximum liability of the State under this MOU exceed XXXXXX XXXXX XXXX dollars (\$XXX,XXX). For the services provided pursuant to this MOU, this amount shall constitute the MOU Project Price and the entire potential compensation due the Contractor for the services and all of the Contractor's obligations hereunder regardless of the difficulty, or materials or equipment required. The Contractor shall be compensated on an hourly, as-used basis.

Payments to the Contractor pursuant to this MOU will be made in accordance with the "Payment Terms" of the Master Contract. Invoices shall be submitted to:

REQUESTING AGENCY PROJECT COORDINATOR  
XXXX XXXX XXXXXX  
XXXXXXXX XX, XXXXX-XXXX

The State may, at any time and for any reason, terminate this MOU in accordance with the provisions of the Master Contract.

This agreement may be modified only by a written amendment that has been executed and approved by the appropriate State officials as indicated below.

**NAME OF CONTRACTOR**

By: \_\_\_\_\_

DATE: \_\_\_\_\_

CONTRACTOR SIGNATORY, TITLE**STATE OF TENNESSEE:****NAME OF REQUESTING AGENCY**

By: \_\_\_\_\_

DATE: \_\_\_\_\_

XXXXXX X. XXXXXXXX, Agency Project Coordinator

**REQUESTING AGENCY FISCAL OFFICER**

By: \_\_\_\_\_

DATE: \_\_\_\_\_

XXXXXX X. XXXXXXXX, Fiscal Officer

**DEPARTMENT OF FINANCE AND ADMINISTRATION  
OFFICE FOR INFORMATION RESOURCES**

By: \_\_\_\_\_

DATE: \_\_\_\_\_

XXXXXX X. XXXXXXXX, OIR Contract Administrator

**ATTACHMENT 6.8**

**SAMPLE  
REFERENCE CHECK FORM**

**State Of Tennessee**

PBS Personnel References

**Vendor Information**

Vendor Name:	Vendor Name
Reference Checked By:	Name
Reference Date:	99/99/9999

**Candidate Information**

Name of Candidate:	Candidate Name
Description of Project:	Description
Title on Project:	Title
Dates of Employment:	Dates
Primary Duties:	Duties

**Reference Information**

Company/Agency Name:	Name
Contact Person:	Company Contact
Title:	Title
Phone Number:	Phone
Relationship to Candidate:	(Supervisor, Customer, Other)

**How would you rate the applicant in the following categories?****Categories:** (Please type the Proper Response – Fair, Good, Very good, Excellent)

Quality of Work	Response
Technical Ability	Response
Communication Skills	Response
Problem Solving Skills	Response
Productivity	Response
Willingness to Take Direction	Response
Meeting Target Dates	Response
Initiative	Response
Attendance/Punctuality	Response
Team Attitude	Response

Would you rehire the candidate or recommend  
Him/her for a position with your company? (Yes or No)

**ATTACHMENT 6.9**

**STATE OF TENNESSEE  
COMPUTER ACCESS  
SECURITY AGREEMENT**

I hereby acknowledge receipt of my computer access code(s) and my use of them demonstrates my agreement to the following guidelines.

1. I shall maintain confidential all computer information and resources to which I have access or control.
2. I shall take appropriate measures to safeguard and protect the information and computer resources of the State that are made available to me.
3. I shall use the information and computer resources only for authorized State business and not disclose any information or documentation obtained from, or pertaining to, the State's computer system(s) to any third party, except in the routine lawful conduct of the State's business.
4. I shall be accountable for and accept full responsibility for all transactions performed using my computer access codes.
5. I shall maintain all computer access codes in the strictest of confidence; immediately change them if I suspect that their secrecy has been compromised and report suspected misuse to the respective Security Administrator.

I have read and agree to comply with the guidelines set forth above.

I understand that willful violation of, or disregard for, any of these guidelines may result in disciplinary action up to and including termination of my employment, termination of my business relationship with the State of Tennessee and possible prosecution under the provisions of the computer Crimes Act as cited at TCA 39 - 14- 601 et seq.

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Social Security Number

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## OFFICE FOR INFORMATION RESOURCES

### CODE OF ETHICS

The Office for Information Resources (OIR) shall provide the policy and guidelines for the protection of the privacy of proprietary, personal, privileged, or otherwise sensitive data that is processed in any manner by this division for any State department, agency, division or bureau. Due to the service oriented status of OIR and the objective of maintaining a high degree of professionalism among all employees in all activities, the following code of ethics is established and will be formally acknowledged and adhered to by all employees.

As a Contractor employee assigned to a State of Tennessee agency, I affirm my adherence to the following ethical guidelines.

1. I will regard State data on individuals and/or facilities and systems as confidential in nature, held in trust, and will protect and cause to be protected such data and systems against unauthorized disclosure and/or use.
2. I will hold confidential from persons not accorded access to privileged data, any such data I receive by virtue of my position.
3. I will not permit private or personal dealings to corrupt or adversely influence the quality, quantity or integrity of advice or services provided as a function of State information systems.
4. I will include in my professional goals, the successful and efficient operation of systems, automated or otherwise, as well as the safeguarding of resources, tangible or intangible.
5. I acknowledge any invention (any product developed as a result of assignment or job related duties) created while in the employment of the State becomes property of the State.

I understand the willful misuse or destruction of data which has been made available to me in the performance of my duties is a violation of Personnel Rules on personal conduct. The violation will result in dismissal of the employee after exercising minimal due process as defined in Personnel Policy Chapter 1120-10-1.3.

I acknowledge receipt of a copy of the Computer Crime Act and the OIR Policy concerning the Code of Ethics/Computer Crimes Act, and understand any conduct in conflict with either is cause for dismissal after minimum due process as required by Personnel Rules.

I acknowledge this Code of ethics and by my signing affirm my intent to comply to the above stated guidelines.

\_\_\_\_\_  
Contractor Employee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Employee's Project coordinator

\_\_\_\_\_  
Date



**ATTACHMENT 6.10****HIPAA BUSINESS ASSOCIATE AGREEMENT**

THIS BUSINESS ASSOCIATE AGREEMENT (hereinafter "Agreement") is between **COVERED ENTITY NAME** (hereinafter "Covered Entity") and **BUSINESS ASSOCIATE NAME** (hereinafter "Business Associate"). Covered Entity and Business Associate may be referred to herein individually as "Party" or collectively as "Parties."

**BACKGROUND**

Covered Entity acknowledges that it is subject to the Privacy Rule (45 CFR Parts 160 and 164) promulgated by the United States Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191.

Business Associate provides services or goods to Covered Entity pursuant to one or more contractual relationships detailed below and hereinafter referred to as "Service Contracts".

**LIST OF CONTRACTS AFFECTED BY HIPAA REQUIREMENTS**

In the course of executing Service Contracts, Business Associate may come into contact with, use, or disclose Protected Health Information (defined in Section 1.7 below). Said Service Contracts are hereby incorporated by reference and shall be taken and considered as a part of this document the same as if fully set out herein.

In accordance with the federal privacy regulations set forth at 45 C.F.R. Part 160 and Part 164, Subparts A and E, which require Covered Entity to have a written contract with each of its Business Associates, the Parties wish to establish satisfactory assurances that Business Associate will appropriately safeguard "Protected Health Information" and, therefore, make this Agreement.

**1. DEFINITIONS**

- 1.1. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR §§ 160.103 and 164.501.
- 1.2. "Designated Record Set" shall have the meaning set out in its definition at 45 C.F.R. § 164.501.
- 1.3. "Health Care Operations" shall have the meaning set out in its definition at 45 C.F.R. § 164.501.
- 1.4. "Individual" shall have the same meaning as the term "individual" in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- 1.5. "Privacy Officer" shall have the meaning as set out in its definition at 45 C.F.R. § 164.530(a)(1).
- 1.6. "Privacy Rule" shall mean the Standards for Privacy for Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subparts A and E.
- 1.7. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR § 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- 1.8. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.

**2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE**

- 2.1. Business Associate agrees to fully comply with the requirements under the Privacy Rule applicable to "business associates," as that term is defined in the Privacy Rule and not use or further disclose

Protected Health Information other than as permitted or required by this Agreement, Service Contracts, or as Required By Law. In case of any conflict between this Agreement and Service Contracts, this Agreement shall govern.

- 2.2. Business Associate agrees to use appropriate procedural, physical, and electronic safeguards to prevent use or disclosure of Protected Health Information other than as provided for by this Agreement. Said safeguards shall include, but are not limited to, requiring employees to agree to use or disclose Protected Health Information only as permitted or required by this Agreement and taking related disciplinary actions for inappropriate use or disclosure as necessary.
- 2.3. Business Associate shall require any agent, including a subcontractor, to whom it provides Protected Health Information received from, created or received by, Business Associate on behalf of Covered Entity or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of, or access to Protected Health Information, to agree, by written contract with Business Associate, to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- 2.4. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- 2.5. Business Associate agrees to require its employees, agents, and subcontractors to immediately report, to Business Associate, any use or disclosure of Protected Health Information in violation of this Agreement and to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement.
- 2.6. If Business Associate receives Protected Health Information from Covered Entity in a Designated Record Set, then Business Associate agrees to provide access, at the request of Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by covered Entity, to an Individual in order to meet the requirements under 45 CFR § 164.524, provided that Business Associate shall have at least **WRITTEN NUMBER (NUMBER)** days from Covered Entity notice to provide access to, or deliver such information.
- 2.7. If Business Associate receives Protected Health Information from Covered Entity in a Designated Record Set, then Business Associate agrees to make any amendments to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to the 45 CFR § 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity, provided that Business Associate shall have at least **WRITTEN NUMBER (NUMBER)** days from Covered Entity notice to make an amendment.
- 2.8. Business Associate agrees to make its internal practices, books, and records including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, created by or received by Business Associate on behalf of, Covered Entity available to the Secretary of the United States Department of Health in Human Services or the Secretary's designee, in a time and manner designated by the Secretary, for purposes of determining Covered Entity's or Business Associate's compliance with the Privacy Rule.
- 2.9. Business Associate agrees to document disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosure of Protected Health Information in accordance with 45 CFR § 164.528.
- 2.10. Business Associate agrees to provide Covered Entity or an Individual, in time and manner designated by Covered Entity, information collected in accordance with this Agreement, to permit Covered Entity to respond to a request by an Individual for and accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528, provided that Business Associate shall have at least **WRITTEN NUMBER (NUMBER)** days from Covered Entity notice to

provide access to, or deliver such information which shall include, at minimum, (a) date of the disclosure; (b) name of the third party to whom the Protected Health Information was disclosed and, if known, the address of the third party; (c) brief description of the disclosed information; and (d) brief explanation of the purpose and basis for such disclosure.

- 2.11. Business Associate agrees it must limit any use, disclosure, or request for use or disclosure of Protected Health Information to the minimum amount necessary to accomplish the intended purpose of the use, disclosure, or request in accordance with the requirements of the Privacy Rule.
- 2.11.1. Business Associate represents to Covered Entity that all its uses and disclosures of, or requests for, Protected Health Information shall be the minimum necessary in accordance with the Privacy Rule requirements.
- 2.11.2. Covered Entity may, pursuant to the Privacy Rule, reasonably rely on any requested disclosure as the minimum necessary for the stated purpose when the information is requested by Business Associate.
- 2.11.3. Business Associate acknowledges that if Business Associate is also a covered entity, as defined by the Privacy Rule, Business Associate is required, independent of Business Associate's obligations under this Agreement, to comply with the Privacy Rule's minimum necessary requirements when making any request for Protected Health Information from Covered Entity.
- 2.12. Business Associate agrees to adequately and properly maintain all Protected Health Information received from, or created or received on behalf of, Covered Entity and to document subsequent uses and disclosures of such information by Business Associate as may be deemed necessary and appropriate by the Covered Entity.
- 2.13. If Business Associate receives a request from an Individual for a copy of the individual's Protected Health Information, and the Protected Health Information is in the sole possession of the Business Associate, Business Associate will provide the requested copies to the individual and notify the Covered Entity of such action. If Business Associate receives a request for Protected Health Information in the possession of the Covered Entity, or receives a request to exercise other individual rights as set forth in the Privacy Rule, Business Associate shall notify Covered Entity of such request and forward the request to Covered Entity. Business Associate shall then assist Covered Entity in responding to the request.
- 2.14. Business Associate agrees to fully cooperate in good faith with and to assist Covered Entity in complying with the requirements of the Privacy Rule.

### **3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE**

- 3.1. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in Service Contracts, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
- 3.2. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information as required for Business Associate's proper management and administration or to carry out the legal responsibilities of the Business Associate.
- 3.3. Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or provided that, if Business Associate discloses any Protected Health Information to a third party for such a purpose, Business Associate shall enter into a written agreement with such third party requiring the third party to: (a) maintain the confidentiality of Protected Health Information and not to use or further disclose such information except as Required By Law or for the purpose for which it was disclosed, and (b) notify Business Associate of any

instances in which it becomes aware in which the confidentiality of the Protected Health Information is breached.

- 3.4. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 CFR § 164.504(e)(2)(D)(B).

#### **4. OBLIGATIONS OF COVERED ENTITY**

- 4.1. Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR § 164.520, as well as any changes to such notice.
- 4.2. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses.
- 4.3. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use of Protected Health Information.

#### **5. PERMISSIBLE REQUESTS BY COVERED ENTITY**

- 5.1. Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

#### **6. TERM AND TERMINATION**

- 6.1. Term. This Agreement shall be effective as of the date on which it is signed by both parties and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, Section 6.3. below shall apply.
- 6.2. Termination for Cause.
  - 6.2.1. This Agreement authorizes and Business Associate acknowledges and agrees Covered Entity shall have the right to immediately terminate this Agreement and Service Contracts in the event Business Associate fails to comply with, or violates a material provision of, requirements of the Privacy Rule or this Agreement.
  - 6.2.2. Upon Covered Entity's knowledge of a material breach by Business Associate,
    - 6.2.2.1. Covered Entity shall, whenever practicable, provide a reasonable opportunity for Business Associate to cure the breach or end the violation.
    - 6.2.2.2. If Business Associate has breached a material term of this Agreement and cure is not possible or if Business Associate does not cure a curable breach or end the violation within a reasonable time as specified by, and at the sole discretion of, Covered Entity, Covered Entity may immediately terminate this Agreement and Service Contracts.
    - 6.2.2.3. If neither cure nor termination are feasible, Covered Entity shall report the violation to the Secretary of the United States Department of Health in Human Services or the Secretary's designee.
- 6.3. Effect of Termination.

- 6.3.1. Except as provided in Section 6.3.2. below, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of, Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
- 6.3.2. In the event that Business Associate determines that returning or destroying the Protected Health Information is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction unfeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is unfeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction unfeasible, for so long as Business Associate maintains such Protected Health Information.

## 7. MISCELLANEOUS

- 7.1. Regulatory Reference. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- 7.2. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191. Business Associate and Covered Entity shall comply with any amendment to the Privacy Rule, the Health Insurance Portability and Accountability Act, Public Law 104-191, and related regulations upon the effective date of such amendment, regardless of whether this Agreement has been formally amended.
- 7.3. Survival. The respective rights and obligations of Business Associate under Section 6.3. of this Agreement shall survive the termination of this Agreement.
- 7.4. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity and the Business Associate to comply with the Privacy Rule.
- 7.5. Notices and Communications. All instructions, notices, consents, demands, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered by hand, by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below, or to such other party, facsimile number, or address as may be hereafter specified by written notice.

### COVERED ENTITY:

**COVERED ENTITY NAME**  
**NAME AND TITLE**  
**ADDRESS**  
 Telephone: **NUMBER**  
 Fax: **NUMBER**

### BUSINESS ASSOCIATE:

**BUSINESS ASSOCIATE NAME**  
**NAME AND TITLE**  
**ADDRESS**  
 Telephone: **NUMBER**  
 Fax: **NUMBER**

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the date of hand delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the facsimile machine at the receiving location and receipt is verbally confirmed by the sender.

- 7.6. Strict Compliance. No failure by any Party to insist upon strict compliance with any term or provision of this Agreement, to exercise any option, to enforce any right, or to seek any remedy upon any default of any other Party shall affect, or constitute a waiver of, any Party's right to insist upon

such strict compliance, exercise that option, enforce that right, or seek that remedy with respect to that default or any prior, contemporaneous, or subsequent default. No custom or practice of the Parties at variance with any provision of this Agreement shall affect, or constitute a waiver of, any Party's right to demand strict compliance with all provisions of this Agreement.

- 7.7. Severability. With respect to any provision of this Agreement finally determined by a court of competent jurisdiction to be unenforceable, such court shall have jurisdiction to reform such provision so that it is enforceable to the maximum extent permitted by applicable law, and the Parties shall abide by such court's determination. In the event that any provision of this Agreement cannot be reformed, such provision shall be deemed to be severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.
- 7.8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee.
- 7.9. Compensation. There shall be **no** remuneration for performance under this HIPAA Business Associate Agreement except as specifically provided by, in, and through, contractual relationships referenced herein.

IN WITNESS WHEREOF,

COVERED ENTITY LEGAL ENTITY NAME:

---

NAME AND TITLE

---

Date

BUSINESS ASSOCIATE LEGAL ENTITY NAME:

---

NAME AND TITLE

---

Date